

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BILLY WAYNE MILLER,

Plaintiff,

vs.

OCEANSIDE POLICE DEPARTMENT and
DRUG ENFORCEMENT AGENCY,

Defendants.

CASE NO. 09 CV 2265 JM (BLM)

**ORDER GRANTING DEFENDANT
OCEANSIDE POLICE
DEPARTMENT'S MOTION TO
DISMISS**

Doc. No. 34

Plaintiff Billy Wayne Miller (“Miller”) instituted this action to set aside the forfeiture of approximately \$182,000 that was initially seized by Defendant Oceanside Police Department (“OPD”). Defendant Drug Enforcement Agency (“DEA”) later forfeited the money pursuant to 19 U.S.C. § 1609.

Both Defendants filed motions to dismiss Miller’s complaint. On December 1, 2009, Miller voluntarily dismissed DEA. Accordingly, the court has already denied DEA’s motion to dismiss as moot. (Doc. No. 41). OPD’s motion to dismiss, however, is still pending before the court. (Doc. No. 34). Miller filed belatedly filed his opposition on December 9, 2009. (Doc. No. 40). For the following reasons, the court hereby GRANTS OPD’s motion to dismiss.

I. BACKGROUND

In 2007, OPD arrested Bethany Thompson (“Thompson”) in an Oceanside, California motel. (Doc. No. 1, Complaint, hereinafter “Compl.” at 2). OPD then searched two motel rooms registered

1 to Thompson. (Compl. at 3). Along with quantities of heroin and various drug paraphernalia, OPD
 2 discovered and seized approximately \$182,000 that it believed were the proceeds of narcotics sales.
 3 (Compl. at 3-4). At some point during interrogations of Thompson and two other suspects, OPD
 4 learned that the money may have belonged to Miller. (Compl. at 6-7).

5 OPD contacted Miller and informed him of the seizure. (Compl. at 7). Miller told OPD that
 6 he was not involved in narcotics sales. (Compl. at 7). Rather, according to Miller, Thompson had
 7 burglarized Miller's holistic medicine business and stolen the money. (Compl. at 7-8).

8 DEA later adopted the seizure of the money and, after sending notice to Thompson and
 9 publishing notice in The Wall Street Journal, declared the money administratively forfeited pursuant
 10 to 19 U.S.C. § 1609. (Doc. No. 31, Declaration of John Hieronymus). DEA did not send notice
 11 directly to Miller.

12 **II. LEGAL STANDARD**

13 A court should dismiss an action where a complaint fails to "state a claim upon which relief
 14 can be granted." Fed. R. Civ. P. 12(b)(6). Therefore, a motion to dismiss should be granted where
 15 the complaint lacks either a "cognizable legal theory" or facts sufficient to support a cognizable legal
 16 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). In evaluating the claim
 17 a court must "accept as true all of the allegations contained in [the] complaint." *Ashcroft v. Iqbal*, 129
 18 S. Ct. 1937, 1949 (2009).

19 **III. DISCUSSION**

20 18 U.S.C. § 983(d)(1) provides that, "[a]n innocent owner's interest in property shall not be
 21 forfeited under any civil forfeiture statute." An innocent owner, like Miller alleges he is, may "file
 22 a motion to set aside a forfeiture." 18 U.S.C. § 983(e)(1). That motion
 23 shall be granted if—

- 24 (A) the Government knew, or reasonably should have known, of the
 25 moving party's interest and failed to take reasonable steps to provide
 such party with notice; and
- 26 (B) the moving party did not know or have reason to know of the seizure
 27 within sufficient time to file a timely claim.

28 *Id.*

OPD argues that its motion to dismiss should be granted for at least two reasons. First, OPD

1 contends that it is not the “Government” for purposes of section 983. (Doc. No. 34, Motion to
2 Dismiss, hereinafter “Mot.,” at 4). Rather, the United States is the “Government” referenced in
3 section 983 and therefore Miller’s cause of action under section 983 can only be against the United
4 States. Second, OPD is not a proper defendant because OPD does not have the money. (Mot. at 5).
5 The money was administratively forfeited by DEA; therefore only DEA can set aside the forfeiture.
6 In essence, OPD contends that it is simply the wrong party and Miller has not therefore stated a claim
7 against OPD.

8 OPD’s argument is persuasive. The repeated references in section 983 to the “Government”
9 do indeed refer to the United States. *See* 18 U.S.C. § 983. Furthermore, 19 U.S.C. § 1609—pursuant
10 to which the DEA forfeited the money—provides that “[t]itle shall be deemed to vest in the United
11 States.” OPD did not institute the forfeiture proceedings and does not have title to the money.
12 Therefore, Miller has not stated a claim against OPD under section 983.

13 **IV. CONCLUSION**

14 For the foregoing reasons, the court hereby GRANTS Defendant OPD’s motion to dismiss.
15 As OPD is the only defendant remaining in the action, the Clerk of the Court is directed to close the
16 file.

17 **IT IS SO ORDERED.**

18 DATED: December 10, 2009



19
20 Hon. Jeffrey T. Miller
United States District Judge

21
22
23
24
25
26
27
28